

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1331 of 1996

in

SPECIAL CIVIL APPLICATION No 4431 of 1996

KIRANKUMAR R BAXI

Versus

UCO BANK

Appearance:

MR KH BAXI for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
UNSERVED for Respondent No. 2
SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of Order: 11/09/97

ORAL ORDER

This appeal is filed against an order passed by learned Single Judge in Special Civil Application No.4431 of 1996 on September 10, 1996.

2. The appellant is original petitioner. He was serving in United Commercial Bank ("Bank" for short) at Kalol. A show cause notice was issued to the appellant on 1st October 1986 and his explanation was called in connection with certain irregularities alleged to have been committed by him. Some time was sought which was granted. It appears that the Central Bureau of Investigation ("CBI" for short) filed three Special Cases under the provisions of the Prevention of Corruption Act, 1947 being Special Cases 45 of 1988, 7 of 1990 and 16 of 1991 against the appellant. It is not disputed by and between the parties that those criminal cases are pending.

3. During the pendency of criminal cases,

fresh charge-sheet came to be issued against the appellant on September 24, 1994 calling upon the appellant to submit his explanation and inquiry has been proceeded with. At that stage, the appellant approached this court for quashing of departmental proceedings.

4. From the order passed by the learned Single Judge, it appears that though the charge-sheet was issued on September 24, 1994, till the date of the order, i.e. till September 10, 1996, the appellant had not submitted reply to the charge-sheet.

5. It was argued before the learned Single Judge that in view of the fact that criminal cases were filed against the appellant and they were pending, inquiry ought not to have been proceeded with. It was also contended that since there was a gross and undue delay on the part of the Bank in initiating proceedings against the appellant and as nothing was done for more than eight years, the inquiry must be quashed. The learned Single Judge, after considering the facts and circumstances of the case, dismissed the petition.

6. When the matter was placed before the Division Bench, it was pointed out that in respect of other employee, namely, Mr.N.P.Vyas, who is similarly situated and against whom also some proceedings were pending had approached this court. His petition was entertained and ad interim relief was granted. The Division Bench, therefore, issued notice on November 5, 1996 and to day the matter is called out for hearing.

7. Mr.Baxi, learned counsel for the appellant submitted that looking to the charges levelled against the appellant in criminal cases as well as in departmental proceeding, it is apparent that they relate to the same incident. In these circumstances, prejudice will be caused to the appellant if departmental proceedings will be continued. In that case, he will have to disclose his defence, which may come in his way even in criminal trial. We do not see any substance in the said contention. Looking to the charges levelled in criminal proceedings, it is clear that they relate to offences punishable under the Indian Penal Code, 1860, as also under the Prevention of Corruption Act, 1947. So far as departmental proceedings are concerned, they relate to misconduct said to have been committed by an employee of the Bank. It, therefore, cannot be said that the charges and allegations are same or similar. In similar circumstances, the Hon'ble Supreme Court considered the Legal position in State of Rajasthan vs.

B.K.Meena, AIR 1997 SC 13 and reiterated the principle in a recent decision in Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miya AIR 1997 SC 2232. In B.K.Meena's case after considering the case law on the point, in paras 14 and 17, Their Lordships observed;

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances, of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills, (AIR 1965 SC 155), is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground

for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would meant his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon

him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

In Mohd.Yousuf Miya, quoting the above paragraphs with approval and reiterating principles formulated in B.K.Meena Their Lordships stated that they were in respectful agreement with the view expressed and law laid down in B.K.Meena.

From the above observations, it is clear that not only that both the proceedings can simultaneously be taken but in the opinion of the Apex Court, ordinarily departmental proceedings must be concluded of as expeditiously as possible and they should not be stayed on the ground of pendency of criminal trial. Considering the ambit and scope, nature of object underlying such proceedings; allegations; burden of proof; order to be passed; etc. the Supreme Court indicated that departmental proceedings should not be stayed.

In our opinion, therefore, in rejecting the Special Civil Application, the learned Single Judge has not committed any illegality and we do not see any infirmity in the said order. LPA is, therefore, dismissed. Notice is discharged. No order as to costs.

So far as Mr.N.P.Vyas is concerned, we are told by the learned counsel for the respondent that his petition is also by now dismissed by the learned Single Judge and that as per his knowledge, no Letters Patent Appeal is filed.

Dt. 11.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)